

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>ROBIN ALBRIGHT,</b>	)	<b>CASE NO. 1:08 CV 2676</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>JUDGE DONALD C. NUGENT</b>
	)	
<b>COMMISSIONER OF SOCIAL SECURITY)</b>		<b>Magistrate Judge David S. Perelman</b>
	)	
<b>Defendant.</b>	)	<b><u>MEMORANDUM OPINION</u></b>

This matter is before the Court on the Report and Recommendation of Magistrate Judge David S. Perelman (Document # 30), recommending that Defendant's final determination denying Plaintiff's claims for disability benefits be upheld and final judgment be entered in favor of the Commissioner.

The Magistrate Judge thoroughly discussed and analyzed the procedural history of this case and the testimony presented to the ALJ. Relying upon the "substantial evidence" standard as discussed in *Garner v. Heckler*, 745 F.2d 383, 387 (6<sup>th</sup> Cir. 1984), the Magistrate Judge found the ALJ's decision to deny Ms. Albright disability benefits to be within his zone of choice.

On January 1, 2010, Ms. Albright filed her Objection to the Magistrate's Report and Recommended Decision. (Docket #33.) Ms. Albright states that she disagrees with the ALJ's findings that ALJ gave proper consideration to the medical opinions of record and that the VE

testimony constituted substantial evidence upon which the ALJ based his finding of “not disabled” at step five of the sequential evaluation. Ms. Albright asks the Court to decline to adopt the Report and Recommended Decision and enter final judgment in her favor, or alternatively remand for further evaluation and analysis.

On February 9, 2010, the Commissioner filed a Response to Plaintiff’s Objection to the Magistrate’s Report and Recommendation. (Docket #35.) The Commissioner urges the Court to adopt the Magistrate Judge’s Report and Recommendation. The Commissioner asserts that the arguments raised by Plaintiff are the same as those presented in her Brief on the Merits and, thus, are not proper objections and that Plaintiff’s other objections are without merit.

#### **Standard of Review for a Magistrate Judge’s Report and Recommendation**

The applicable district court standard of review for a magistrate judge’s report and recommendation depends upon whether objections were made to the report. When objections are made to a report and recommendation of a magistrate judge, the district court reviews the case *de novo*. FED. R. CIV. P. 72(b) provides:

The district judge must determine *de novo* any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

The standard of review for a magistrate judge’s report and recommendation is distinct from the standard of review for the Commissioner of Social Security’s decision regarding benefits. Judicial review of the Commissioner’s decision, as reflected in the decisions of the ALJ, is limited to whether the decision is supported by substantial evidence. *See Smith v. Secretary of Health and Human Servs.*, 893 F.2d 106, 108 (6<sup>th</sup> Cir. 1989). “Substantial evidence exists when a reasonable mind could accept the evidence as adequate to support the challenged

conclusion, even if that evidence could support a decision the other way.” *Casey v. Secretary of Health and Human Servs.*, 987 F.2d 1230, 1233 (6<sup>th</sup> Cir. 1993) (citation omitted).

### **Conclusion**

This Court has reviewed the Magistrate Judge’s Report and Recommendation *de novo* and has considered all of the pleadings, transcripts, and filings of the parties, as well as the Objections to the Report and Recommendation filed by Ms. Albright. After careful evaluation of the record, this Court adopts the findings of fact and conclusions of law of the Magistrate Judge as its own. Magistrate Judge Perelman properly found that the ALJ’s decision denying benefits was within his zone of choice and supported by substantial evidence.

For the foregoing reasons, the Report and Recommendation of Magistrate Judge Perelman (Document # 30) is hereby ADOPTED. The Commissioner’s final determination is hereby AFFIRMED.

IT IS SO ORDERED.

s/Donald C. Nugent  
DONALD C. NUGENT  
United States District Judge

DATED: May 12, 2010